IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

NO. 118

PAUL GINSBURG, Petitioner

v.

HORACE STERN, ALLEN M. STEARNE, CHARLES ALVIN JONES, JOHN C. BELL, JR., THOMAS McKEEN CHIDSEY, MICHAEL A. MUSMANNO and JOHN C. ARNOLD, Individually and Jointly as Justices of the Supreme Court of Pennsylvania.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

## PETITION FOR REHEARING

*To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petition for rehearing of Paul Ginsburg respectfully represents:

FIRST: On October 12, 1959, this Honorable Court denied the petition for writ of certiorari in the above captioned actions. The petition showed that the judgments sought to be reviewed conflicted with the Law of the Land in adjudicating that:

(A) On a Motion to Dismiss, the allegations of the Complaint need not be taken as admitted to be true, and all inferences therefrom need not be construed most favorably towards the plaintiff's case.

(B) Courts no longer must recognize Notice Pleadings in Federal Practice, contrarily to Rule 8(a) of the Federal Rules of Civil Procedure.

(C) The petitioner has no federal constitutional and civil rights.

(D) The respondents as members of the State judiciary acting in their official capacity are immune from suits for deprivations of Federal constitutional and civil rights.

(E) The plaintiff no longer has the right to discovery which is guaranteed by Rule 26(a) of the Federal Rules of Civil Procedure.

(F) The affirmative defense of immunity not pleaded under Rule 8(c) of the Federal Rules of Civil Procedure, is no longer waived pursuant to Rule 12(h).

(G) The "right" under Rule 15(a) to amend once as a matter of course, without leave of court or consent of defendants, at any time prior to service of a responsive pleading, can be ignored.

(H) District Court Judges are no longer bound by the Federal Rules of Civil Procedure as by an Act of Congress.

(I) The right to amend freely to secure a determination on merits rather than on technicalities, can be denied discriminatorily without review.

(J) An Exhibit to a Complaint which is relevant, material, pertinent thereto and free of scandalous matter, can be suppressed and impounded whimsically and capriciously without a Hearing.

(K) A mandate from the Court of Appeals is controlling as to all matters and not only to such matters as are within the compass of the mandate, with the un-

lawful result that the District Court is not still free to act as to questions not within the compass of the mandate. Therefore, a mere mandate now can delimit, disaffect or change the powers and duties of District Court Judges.

(L) When an action is actually pending pursuant to the Federal Rules of Civil Procedure after issuance of a mandate, it is not really pending, and, therefore, the party who succeeded in procuring the mandate can "legally" execute for costs upon the property of the adversary who is naive enough to rely upon the Rules and the applicable law, on the preposterous theory that the pending action is not pending.

(M) The jurisdiction of the Court of Appeals is no longer exclusively appellate; and it now can assume the powers and function of the District Court.

(N) An action can volley back and forth between the District Court and the Court of Appeals without a single legal adjudication on procedural and substantive issues that are properly before the Courts. Therefore, a plaintiff can be deprived of his right to a first chance in the District Court and a second chance in the Court of Appeals, and upon denial of certiorari in the Supreme Court, he has litigated "legally" throughout the Federal System without ever having had a chance (with undue process of law).

(O) In view of the foregoing, the petitioner has only been afforded the right to spend a lot of precious time and money for non-profit recordings, to be left merely with the right to criticize; and is apprehensive that even such remnants of rights might likewise be lost to petitioner upon discovery.

(P) It was respectfully submitted that such actions below called for an exercise of this Honorable Court's supervisory power over the lower courts, but to no avail.

SECOND: Petitioner's Reply Brief showed that the respondents' briefs in opposition to the Petition failed to comply with paragraph 1 of Rule 24 of this Court because they did not disclose "any matter or ground why the cause should not be reviewed by this Court".

THIRD: In rendering the decisions and decrees below, the Judges did not fully comply with the Canons of Judicial Ethics. There is a grave doubt about violations of Canon 1, Relations of the Judiciary; Canon 2, The Public Interest; Canon 3, Constitutional Obligations; Canon 5, Essential Conduct; Cannon 6, Industry; Canon 14, Independence; Canon 19, Judicial Opinions; Canon 20, Influence of Decisions upon the Development of the Law; Canon 22, Review; and Canon 34, A Summary of Judicial Obligation.

FOURTH: This Honorable Court's attention is particularly directed to Canon 20, Influence of Decisions upon the Development of the Law, because of the confusion and frustration caused and to be caused by the decisions in the instant cases. The Northern mandate of this Honorable Court in *Cooper et al., v. Aaron, et al.*, 358 U. S. 1 (1958), was challenged, attacked, repudiated and even reversed by Southern Judges who were informed of the decisions herein. The attempts of the Attorney General of the United States from the North to enforce and protect the right to vote for some Negroes of the South were attacked, defeated and even ridiculed by State officialdom, cognizant of the decisions herein.

FIFTH: This denial of certiorari gives support to the popular misconception that the only Civil Rights are

the right to attend an integrated school and the right to vote. According to the Law of the Land, there are numerous other civil rights authoritatively enumerated in the Petition, which are supposedly legally common to both Whites and Negroes, and of which your petitioner has been discriminatorily deprived. It is apparent from the Record that some Negro Judges in the North deprive White citizens of their civil rights.

SIXTH: Promptly after President Eisenhower was notified of the decisions in the instant cases, he discarded the Civil Rights issue and withdrew his activity from the cause. Being then fully informed and seeing that just as some White Judges in the South deprive some Negroes of their civil rights, some Negro Judges in the North deprive some Whites of their civil rights, the President must have concluded that the civil rights issue degenerated into politics as usual. It was then that the President abandoned it, with the attitude of "A plague on both your houses". For this the President of the United States of America was unduly subjected to severe criticism by the National Association for the Advancement of Colored People.

SEVENTH: In arriving at the decisions sought to be reviewed, the Judges of the Court of Appeals in effect permitted District Court Judges to reverse that Court's Judgment in *Picking v. Pa. R. Co.*, 151 F.2d 240 (1945), and in other cases; and even Chief Judge John Biggs, Jr., who wrote the Opinion in *Picking*, so submitted. Could it not be likewise implied from this denial of certiorari, that the lower Courts have done the same to this Court's pronouncements in *Cooper v. Aaron, supra?*

EIGHTH: Because of the conflicts involved, your petitioner is justified in arguing that the disintegrated Mason-Dixon Line has been replaced by an obverse one. Just as Dred Scott had to flee to safety above that old Line for protection, is "Dread" Ginsburg now obliged to descend to security below the new one in search of enforcement?

NINTH: Neither a complainant nor his counsel wants to sue public officials if they are immune from suit. However, if the officials are not immune, suits against them should proceed with due process of law. Therefore, this Honorable Court should grant certiorari herein and deliver an Opinion which would clarify all of the rights and liabilities involved. As a matter of simple justice, this is required by the peoples' "Right to Know".

Wherefore, your petitioner prays that this Honorable Court grant a rehearing, if for no other reason than to obviate an avalanche of Petitions for Rehearing out of time in other proceedings, which would be justifiable upon denial of certiorari herein.

PAUL GINSBURG,
Counsel for Petitioner.

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## CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.

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